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9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**

12 VIRGIL GRAVES, Jr., VIRGIL
13 GRAVES, SR., and COREY
14 GRAVES,

Plaintiffs,

v.

16 CITY OF STOCKTON, et al.,

Defendants.

Case No. CIV S-04-0430 DFL KJM

STIPULATION NARROWING
CLAIMS TO BE ADJUDICATED ON
DEFENDANTS' RULE 56 MOTION
FOR SUMMARY JUDGMENT OR
SUMMARY ADJUDICATION; ORDER

Date: February 1, 2006
Time: 10:00 a.m.
Place: Courtroom 7

23 **STIPULATION**

24 1. Plaintiffs filed a first amended complaint naming various defendants and
25 alleging various claims. Defendants filed a motion pursuant to Rule 56 for summary
26 judgment or, alternatively, summary adjudication. Counsel for the parties have met and
27 conferred. As a result of that meeting and conference, the parties hereby stipulate and
28 agree to narrow the issues as stated herein.

1 2. In a separate stipulation filed pursuant to Rule 41, the parties stipulated
2 to dismissing with prejudice the following defendants: Stockton Police Department,
3 Mark W. Herder, Brian Fry, Robert Wong, Tammie Murrell, Scott Graviette, Anthony
4 Restuccia, and James Ridenour. Accordingly, the potential liability of those defendants
5 is no longer at issue in this case.

6 3. The parties stipulate to dismiss all claims asserted on behalf of plaintiff
7 Bebberly Ward, who is deceased.

8 4. The parties stipulate to dismiss the Fifth Claim for Relief in its entirety.

9 5. The parties stipulate to dismiss the following:

10 (a) From the First Claim for Relief (42 U.S.C. § 1983): the claims of
11 all plaintiffs other than Virgil Graves, Jr., and all alleged constitutional
12 deprivations other than that of Graves, Jr., for excessive force.

13 (b) From the Second Claim for Relief (Assault and Battery): the
14 claims of all plaintiffs other than Virgil Graves, Jr.

15 (c) From the Third Claim for Relief (Intentional Infliction of Emotional
16 Distress): The claims of plaintiff Virgil Graves, Jr.

17 6. The parties submit that the following claims remain to be adjudicated on
18 defendants' pending Rule 56 motion:

19 (a) On the First Claim for Relief On the First Claim for Relief (42
20 U.S.C. § 1983): (1) Whether defendants Jenneiahn, Johnson or City of Stockton
21 caused plaintiff Virgil Graves, Jr., to be subjected to excessive force on March
22, 2002, (2) Whether defendants Villanueva, Thrush, Kamigaki, or City of
23 Stockton caused plaintiff Virgil Graves, Jr., to be subjected to excessive force
24 on April 10, 2002, and (3) whether any of the individual defendants are entitled
25 to qualified immunity.

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(b) On the Second Claim for Relief: (1) Whether defendants Jenneiahn, Johnson or City of Stockton battered plaintiff Virgil Graves, Jr., on March 22, 2002, (2) Whether defendants Villanueva, Thrush, Kamigaki or City of Stockton battered plaintiff Virgil Graves, Jr., on April 10, 2002, and (3) whether any of the defendants are entitled to statutory immunity under California state law.

(c) On the Third Claim for Relief: (1) Whether defendants Villanueva, Thrush, Kamigaki, or City of Stockton intentionally inflicted emotional distress on plaintiff Virgil Graves, Sr., or Corey Graves on April 10, 2002, and (2) whether any of the defendants are entitled to statutory immunity under California state law.

(d) On the Fourth Claim for Relief: (1) Whether any defendant negligently injured any plaintiff, and (2) whether any defendant is entitled to statutory immunity under California state law.

THE LAW OFFICES OF JOHN BURTON

DATED: January 13, 2006

**RICHARD E. NOSKY, JR.
CITY ATTORNEY**

ORDER

IT IS SO ORDERED.

DATED: 1/20/2006

DAVID F. LEVI
United States District Judge